

III. REMARKS

Status of the Claims

Claims 1-44 are amended and presented for reconsideration.

Summary of the Office Action

Claims 1-44 stand rejected under 35USC102(e) on the basis of the cited reference Hawkins et al, U.S. Patent No. 6,009,458. Claims 1,32-44 stand rejected under 35USC102(e) based on the reference Perlman, U.S. Patent No. 6,134,590. The Examiner is respectfully requested to reconsider his rejection in view of the following remarks.

Applicant has amended the claims of this application to make it clear that the recreational software of this application is transmitted and used through wireless communications using wireless terminals connected by a wireless network. This does not represent a change in the scope of the claims, but only the removal of extraneous words and phrases for clarification.

In removing this application from the Appeals process and reopening prosecution on the basis of newly introduced references, the Examiner has rendered all prior issues resolved.

Discussion of the Cited References

The Examiner now relies on the reference Hawkins as support for the rejection based on anticipation. The central idea of Hawkins is to digitally create generic playing objects with some basic characteristics, and use mapping programs to derive the actual playing objects needed for a certain game. As an example, a highly valued and rare generic supercharacter in Hawkins's set could be mapped to a "Super Queen" in a chess-like game, or to a triumphant army in a strategy game resembling Risk.

The disclosure of the cited reference is still lacking the applicant's claimed feature according to which the enabled state of playing will only be established after the both terminals know they are going to play. According to Hawkins, the "chat room" is only for players that already have all required capabilities for playing the game. Nothing in Hawkins would suggest that only after the user has found a suitable and willing adversary, there would result any exchanging of executable software or enablement tokens. The games of Hawkins originate in a chat room type internet cite in which users desiring to play a game congregate. This is discussed in column 18, lines 59-62 of Hawkins as follows:

"Launching a new game is accomplished by sending a message to a game facility indicating that it should launch a new game instantiation with a list of the identities of all the players."

There is nothing in Hawkins that indicates a mobile telephone user may call another mobile telephone for the purpose of setting up a game session. Wireless communications are not mentioned in Hawkins. This is discussed in column 18, lines 63-67 of Hawkins as follows:

"While a group of users are playing a game, the public game flow control traffic from the game facility to the clients may be directed through the user interface facility 402 via a communications channel which is similar to an Internet Relay Chat (IRC) channel."

The above disclosure is included in the excerpt cited by the Examiner, but the deficiencies are ignored.

The Examiner also cites col. 20, lines 18-28 to show how client software would be downloaded to a user's terminal. The Examiner neglects the fact that this passage of Hawkins describes, what happens immediately when a new user registers in the game facility. This is before entering the chat room and before there is any chance selecting any opponents.

Clearly the application is run on some site on an internet server and requires a game server, see column 19, lines 9-14, as follows:

"A running game facility 408 manages all instantiations of a given game. It knows which users are players in the instantiation, and executes game commands from them. It notifies all interested parties (including both players and observers) of game events by multicasting through the user interface facility 402."

All of the above deficiencies stem from the fact that the games of Hawkins' are not executed on terminals of a wireless radio system, but ordinary networked computers. Nothing in the reference Hawkins suggests that anything other than general purpose computers would be used for playing.

The cited reference Hawkins fails to support the rejection based on anticipation because it does not involve communications transmitted by a wireless terminal in a wireless network. In addition, a game application in Hawkins is not initiated by direct communication between first and second wireless terminals. Also, there is no suggestion that the games are played using software executed by a wireless terminal.

The Examiner's further rejection based on Perlman is subject to the same deficiencies as described above. The system described in Perlman is simply described, in column 4, lines 43-47, as follows:

"The present invention includes an apparatus and method for establishing a multiple site data communication link with a plurality of other computers on conferenced telephone line. The system of the present invention for linking a plurality of computers in a multiple site configuration..."

The system of Perlman is similar to the system of Hawkins except it utilizes a conference call telephone line instead of an Internet chat room site to link multiple personal computers. There is not mention of using wireless terminals via a wireless communication network.

It is well settled that the anticipation analysis requires a positive answer to the question of whether the systems of Hawkins or Perlman would infringe the claims of this application if it were later.

The independent claims of this application are directed to a method, apparatus, software, or system for distributing a recreational application having the following feature:

“transmitting from a first terminal of said group of terminals to a second terminal of said group of terminals, a proposal for setting up a session of utilising a recreational application and

only after the second terminal has received said proposal, using the communicational capabilities of at least one of the first and second terminals to establish a state where both the first terminal and the second terminal possess executable software components of said recreational application for setting up a common, shared session and for executing said recreational application on said first and second terminals.”

Since this capability is not present in either the system of the reference Hawkins or Perlman, there can be no infringement of the subject claims. Therefore, neither the disclosure of Hawkins nor the disclosure of Perlman supports the rejection based on anticipation with respect to any of the claims.

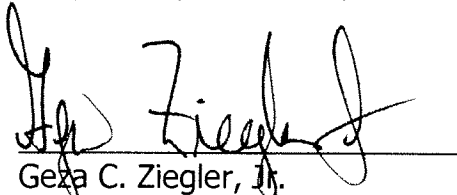
For all of the above reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

09/881,452

Response to Office Action mailed May 22, 2006

The Commissioner is hereby authorized to charge payment of \$120.00 for a one-month extension of time as well as for any other fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,



Geza C. Ziegler, Jr.
Reg. No. 44,004

28 August 2006
Date

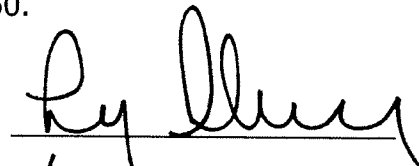
Perman & Green, LLP
425 Post Road
Fairfield, CT 06824
(203) 259-1800
Customer No.: 2512

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being deposited transmitted electronically, on the date indicated below, addressed to the Mail Stop AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Date: 28 August 2006

Signature:


Lisa Shimizu
Person Making Deposit